

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

JOSEPH BERNARD FOWLER, PRO SE,	§	
TDCJ-CID No. 1812422,	§	
Previous TDCJ-CID No. 623887,	§	
Previous TDCJ-CID No. 909414,	§	
Previous TDCJ-CID No. 954506,	§	
Previous TDCJ-CID No. 961436,	§	
Previous TDCJ-CID No. 997657,	§	
	§	
Plaintiff,	§	
	§	
v.	§	2:15-CV-0290
	§	
Mr. NFN WHITFIELD ET AL.,	§	
	§	
Defendants.	§	

**ORDER DENYING MOTION FOR LEAVE
TO VOLUNTARILY DISMISS AND ORDER OF DISMISSAL**

Plaintiff JOSEPH BERNARD FOWLER, while a prisoner confined in the Texas Department of Criminal Justice, Correctional Institutions Division, filed suit pursuant to Title 42, United States Code, section 1983 complaining against eight defendants employed by the Texas Department of Criminal Justice and has been granted permission to proceed *in forma pauperis*.

On December 7, 2015, the Magistrate Judge issued a Report and Recommendation analyzing plaintiff's claims and recommending dismissal with prejudice as frivolous and for failure to state a claim on which relief can be granted.

On December 18, 2015, plaintiff filed his Objections to the Report and Recommendation. At the same time, plaintiff also filed a Motion to Voluntarily Dismiss and a Motion for Appointment of Counsel.

By his Motion to Voluntarily Dismiss, plaintiff states he has learned the proper vehicle for his challenge to his disciplinary conviction was habeas, and now that he has learned of the ruling in *Heck v. Humphrey*, 512 U.S. 477, 114 S.Ct. 2364, 2372, 129 L.Ed.2d 383 (1994), he will file a habeas action “to redress his grievances with the State.” Plaintiff asks leave to voluntarily dismiss this cause so he will not lose any accumulated goodtime credits for filing a frivolous lawsuit.

Voluntary dismissal of the instant suit would result in the dismissal, not only of plaintiff’s claims against defendants MARTINEZ and CARREON, which claims are barred until the *Heck* conditions are met, but also of plaintiff’s claims against the remaining six defendants, which are subject to dismissal as frivolous and for failure to state a claim for reasons independent of *Heck v. Humphrey*. This would leave these claims subject to being reasserted at a later date.

The Court has made an independent examination of the records in this case and has examined the Magistrate Judge’s Report and Recommendation, as well as the objections submitted by plaintiff.

The Court is of the opinion that plaintiff’s objections should be OVERRULED and the Report and Recommendation of the United States Magistrate Judge should be ADOPTED by the United States District Court.

This Court, therefore, does OVERRULE plaintiff’s objections, and does hereby ADOPT the Report and Recommendation of the United States Magistrate Judge.

IT IS THEREFORE ORDERED that the Civil Rights Complaint by JOSEPH BERNARD FOWLER is DISMISSED WITH PREJUDICE AS FRIVOLOUS AND FOR FAILURE TO STATE A CLAIM ON WHICH RELIEF CAN BE GRANTED.

LET JUDGMENT BE ENTERED ACCORDINGLY.

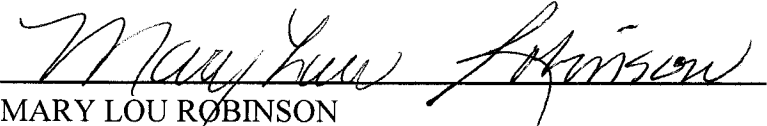
Plaintiff's motion for leave to voluntarily dismiss this cause is DENIED for the reasons set forth herein.

All other pending motions are DENIED.

The Clerk shall send a copy of this order to plaintiff and to any attorney of record. The Clerk shall also mail copies of this order to TDCJ-Office of the General Counsel, P.O. Box 13084, Austin, TX 78711; and to the Pro Se Clerk at the U.S. District Court for the Eastern District of Texas, Tyler Division.

It is SO ORDERED.

Signed this the 31st day of March, 2016.


MARY LOU ROBINSON
United States District Judge